

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DENNIS MACK,

Plaintiff,

v.

ACCEM WAREHOUSE, INC.
et al.,

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:
:

Civil Action No. 20-960 (SRC)

OPINION & ORDER

CHESLER, U.S.D.J.

This matter comes before the Court on the motion to dismiss the Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), by Defendants Accem Warehouse, Inc., Gerald Mecca, and Mecca & Son Trucking, Corp. (collectively, “Defendants.”) For the reasons that follow, the motion will be dismissed.

On January 29, 2020, Plaintiff Dennis Mack filed the Complaint. Defendants filed the instant motion to dismiss in lieu of filing an Answer. Plaintiff did not file any opposition brief by the filing deadline, but did file an Amended Complaint.

The Court finds that Defendants’ motion to dismiss is now moot. The motion to dismiss challenged the first three claims in the Complaint based on a factual assertion extrinsic to the Complaint. Factual matters extrinsic to the Complaint cannot be considered on a motion to dismiss, and such arguments are properly made in a motion for summary judgment, pursuant to Federal Rule of Civil Procedure 54.

In any case, it appears that Plaintiff filed an Amended Complaint in an attempt to

remedy the defects alleged in Defendants' motion to dismiss. The Court will dismiss the pending motion to dismiss so that the parties may proceed to litigate on the basis of the Amended Complaint. Defendants are granted leave to renew the motion to dismiss, should they believe that it is still appropriate.

For these reasons,

IT IS on this 24th day of June, 2020

ORDERED that Defendants' motion to dismiss the Complaint (Docket Entry No. 7) is **DISMISSED**.

s/ Stanley R. Chesler
Stanley R. Chesler, U.S.D.J.